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ABSTRACT

This self-instructional unit for supervisors and managers in the British hotel and catering industry is designed to consolidate the work covered in a 1-day course. The document begins with an introduction and advice on how to use the unit. The following topics are covered: (1) the law and personnel procedures; (2) consultation and negotiation; (3) discipline, grievances, and disputes; (4) dealing with staff who leave, including those who are asked to leave; (5) nondiscrimination and equal opportunities; (6) trade union membership and individual rights; (7) time off and maternity leave; and (8) protecting people in the workplace. Each section contains trainee objectives and pencil and paper activities, with suggested answers, designed to help trainees meet those objectives. (CML)

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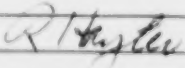
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Supervisory Skills

MODULE

RIGHTS & RESPONSIBILITIES

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Rights and Responsibilities was first published in 1986 as part of *Personnel Management in Practice* — produced under an Open Tech contract with the then Manpower Services Commission. *Personnel Management in Practice* was written by J Philip Magurn and edited by Claire Nash. Rodney Martin has updated *Rights and Responsibilities* to ensure it is in line with current personnel practice and legislation and Roy Hayter has edited the text. Cartoons are by Ian West.

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HOW TO USE THIS UNIT

The material in *Rights and Responsibilities* is presented in a self-instructional format. It will help build on and consolidate the work covered in the one-day HCTB course of the same title.

Rights and Responsibilities is divided into eight sections. At the start of each section is a statement of the objectives you will be able to achieve as a result of working through the material that follows.

From time to time you will be asked to relate information given in the text to your own experience and knowledge. Space is provided below these activities for you to write your answers. Some suggested solutions to the questions are given on the following page.

You will also be referred to parts of two related HCTB publications: *Employee Relations* and *Health and Safety in Hotels and Catering*.

Delegates on the HCTB's course will receive a number of assignments relating to *Rights and Responsibilities*.

INTRODUCTION

The words 'rights' and 'responsibilities' are inextricably linked: they represent two sides of the same coin. All legal (and moral) rights carry responsibilities. For example, the right to receive a salary or wage also holds the responsibility for carrying out appropriate work for that pay. Whether something is a right or a responsibility depends on whose point of view is being considered. In the example just given it would be the employer's responsibility to reward each member of staff in the agreed manner.

Each manager needs to devise procedures which uphold rights and responsibilities while carrying out the objectives of the establishment, unit or operation. Some of those procedures will be shaped largely by operational demands and the manager's personal style of management. Others will be shaped largely by legislative requirements.

Rights and Responsibilities considers a variety of sound personnel management practices which comply with the law. It does not attempt to turn you into a walking legal encyclopaedia.

RIGHTS AND RESPONSIBILITIES

SECTION 1 The law and personnel procedures



After completing this section you will be able to:

- ▶ recognise the legislative framework for personnel management
- ▶ recognise individual rights of people at work
- ▶ decide what kind of procedures are appropriate in your workplace for the best conduct of the operation, legal obligations and sound working relationships.

RIGHTS AND RESPONSIBILITIES

A century or so ago employers could do more or less what they liked. They could refuse to employ black, Jewish or Irish people. They could pay women at half the rate of their male colleagues. They could sack staff without explanation, ignore safety considerations and make a working day last 18 hours without guaranteed pay in cash.

Things have changed. Today's employees have extensive legal rights and a number of collective rights. Even if the flood of new employment legislation is now only a trickle in comparison with the 60s and 70s, managers must still grapple with many different applications and effects of the law.

(This unit only touches upon collective rights at work — the areas often called 'industrial relations'. If you would like a brief insight into these areas before you tackle the rest of this section, look at chapter 2 of *Employee Relations*, paying particular attention to the paragraphs on trade unions; and chapter 13, paying particular attention to the paragraphs on individuals and unions.)

THE LEGISLATIVE FRAMEWORK

There are two basic sources of law: *common law* and *statute law*. Common law has existed throughout our history and is the 'unwritten' rules of what is fair in everyday life. Trespass and negligence are typical examples. Common law derives from judges' decisions, while statute law usually comes from an Act of Parliament.

You are probably also familiar with the terms: *civil law* and *criminal law*. Civil law, whether common or statute, regulates the relationships between individuals. Defamation and breaches of contract come under this heading. Criminal law is concerned with an act or omission to do something, or to do something to a particular standard, laid down by common or statute law and subsidiary regulations. Forms of punishment are specified.

It is important to remember that, in practice, matters of dispute can often be dealt with under two forms of law. So a staff member who breaks a wrist at work because of a dangerous floor could sue you for damages in the civil courts, while an environmental health officer or health and safety inspector could prosecute you through the criminal courts for a breach of safety legislation.

Since 1964 there has been another important type of court. These are *industrial tribunals*, which have a status comparable to Magistrates' or Sheriffs' Courts. Tribunals deal with almost all employment legislation in the first instance. Appeals from tribunals go to the Employment Appeal Tribunal, which has the status of a High Court. An industrial tribunal consists of an experienced lawyer in the chair with two lay assistants. (For further details read the paragraphs on industrial tribunals in chapter 2 of *Employee Relations*.)

Think about some of the important individual legal rights that you have as an employee. List the main ones below.

RIGHTS AND RESPONSIBILITIES

The list is extensive. It might include these individual rights at work:

- statement of terms and conditions of employment
- equal pay and opportunities regardless of sex and race
- guarantee payment in the event of short-time working or lay-offs
- trade union membership
- time off for certain activities.

This list is obviously not comprehensive and it is important to note that within a particular right, there may also be *hidden rights*. For example, there is — depending on certain criteria — a right to payment for redundancy dismissal. Within this right there are also rights to:

- a statement showing how redundancy payments are calculated
- full notice or pay in lieu quite apart from the linked rights to:
 - a trial period in an alternative job
 - time off with pay to look for other work.

As you can see, individual rights at work are extensive. So take care!

WHAT PROCEDURES MEAN AT WORK

A procedure is quite simply an acceptable way of carrying out some task. It may be the way in which dry goods are ordered, or the process by which new staff are recruited, or the way in which budgets are drawn up and agreed. A procedure provides everyone involved with a common pattern to follow so that efforts are co-ordinated and regulated.

In many cases the procedure is contained in a written form. This has the advantage of being a point of reference and guidance. But many procedures are unwritten although nonetheless established. This wide range of ways of doing things is simply a reflection of the variety and complexity of forms of social organisation.

In some cases the procedure is an imposed one, laid down by the law or an authority. In other cases it is an agreed process among those who operate or are affected by it. The effectiveness of any procedure is not dependent so much on the origin as on the acceptability and goodwill of those involved. The really successful procedures closely conform with the views of those who must observe them.

Any new procedure should be shaped by the needs it is designed to meet and by the experience of similar procedures. It needs to have some flexibility to adapt to new needs as they arise and yet be capable of consistent application.

In any workplace, even the smallest, it is necessary to provide orderly, consistent and known methods for dealing with working relationships. In this way problems can be tackled and differences resolved in a way that can be seen by all to be consistent and fair.

Make a list below of at least three reasons why you think it is necessary to have procedures at work. You may find it helpful to consider the reasons from:

- a) the employer's viewpoint*
- b) the viewpoint of the staff.*

RIGHTS AND RESPONSIBILITIES

You might have given some of these reasons:

From the employer's viewpoint:

- Basic rules reduce the risk of inconsistency.
- Proper procedures show commitment to fairness.
- Procedures provide continuity even when managers and staff change.
- Where there is more than one level of management, a procedure helps to define the authority at each level.
- Where the existence of a procedure is statutory or legally advisable, it enables the company to keep within the law.

From the viewpoint of the staff:

- A procedure provides a means of resolving an individual or group difficulty.
- It gives a greater sense of security and confidence of fair treatment.
- It allows those issues of importance to staff to be aired and recognised by management.

FORMAL AND INFORMAL PROCEDURES

In those establishments which work with recognised trade unions, it is likely that many procedures will have been formalised and documented. At the other end of the spectrum in small, non-unionised firms, the likelihood is that the agreements will be quite informal and ad hoc, with staff free to chat to the boss over a cup of tea. In practice in the hotel and catering industry, it probably amounts to an amalgam of both the formal and informal, but all companies should have some form of grievance procedure — a formal arrangement is required by law.

Because of the nature of the industry and the generally relaxed interaction between managers and staff there are usually plenty of opportunities for informal discussions and so the idea of formalising some procedures may seem redundant. However, there are real dangers in accepting the idea that problem-solving can best be left to an ad hoc approach.

Unless you have always worked in establishments where all the procedures have been formalised, the chances are that you have experienced management/staff relationships which were left almost to chance and seen problems in these relationships solved more by good luck than design.

Note below some of the difficulties you have experienced when such problem-solving has been left to ad hoc arrangements.

RIGHTS AND RESPONSIBILITIES

Ad hoc arrangements can sometimes help solve a problem quickly. This is important, but in the long term difficulties can arise stemming from:

- differences in treatment at different times and in different departments
- uncertainty among staff and managers about what the rules actually are
- lack of understanding about who is responsible for what
- the same rules being interpreted differently, even by the same people
- the dangers arising from believing that problems are being solved 'over the heads' of those who think they should have dealt with them.

RECOMMENDED PROCEDURES

The things that govern or influence the way people behave at work are almost as diverse as the number of workplaces. Included among these are the size of the firm, the nature of the work done or service provided, the quality and style of management, the extent of trade union organisation and local and historical considerations.

Therefore, there cannot be an *ideal* list of procedures, but the following form a common core in most industries, including hotels and catering:

- consultation procedure
- negotiating procedure
- disciplinary procedure
- grievance procedure
- disputes procedure.

The rest of the unit looks at these and other personnel procedures and their legal implications.

This section ends here. As it is a short section, you may wish to proceed immediately to Section 2 which is also brief. It deals with consultation and negotiation.

RIGHTS AND RESPONSIBILITIES

SECTION 2 Consultation and negotiation



After completing this section you will be able to:

- ▶ determine suitable distinctions between matters for consultation and matters for negotiation in your workplace
- ▶ prepare a consultation procedure for your workplace.

CONSULTATION

One of the characteristics of the hotel and catering industry is a close interaction between staff and employers/managers. This is often quoted as the main reason for not formalising arrangements in the way which is common in other industries. There is some justification for this view but, in all but the smallest units, serious consideration should be given to the advantages of establishing some sort of process which allows for a freer and fuller exchange of ideas about the business on a regular basis. This can be the foundation of the consultative process.

Let's start with a fact: no one has a monopoly of good ideas. This is especially true in hotels and catering where there are so many diverse skills and such a wide range of interactions. If the success of a business depends upon everyone who works in it, then it is clear that there is a need for a forum to exchange ideas. However, precautions must be taken to ensure that any meeting established under this banner does not generate into a gossip session or a get-together for moaners! This means that, to be effective, the consultative procedure needs to be properly constituted and its purpose made clear to all participants.

Consultation is not the same thing as communication, which happens to some degree whether it is planned or not. The specific ingredient that differentiates the process of consultation is that it is an exchange of ideas on a topic which affects the staff and the business with a view to finding a solution that is acceptable to both sides, before a decision is reached. It is not a form of negotiation. There should be no element of bargaining, no seeking to exchange one thing for another, no quid pro quo.

In essence, consultation is pre-planned discussion with staff to obtain their views and their feelings on a subject which may or may not lead to a change in practices, policy or procedures, but about which no decision has yet been reached.

Consider the following list of topics and tick those you consider are ones for consultation and those you consider are ones for negotiation.

	Consultation	Negotiation
1. Annual holidays	☐	☐
2. Sick pay	☐	☐
3. New equipment	☐	☐
4. Uniforms	☐	☐
5. Working hours	☐	☐

	Consultation	Negotiation
6. Subjects for negotiation	☐	☐
7. Structural alterations	☐	☐
8. Induction procedures	☐	☐
9. Duty rosters	☐	☐
10. Meal breaks	☐	☐

Unfortunately, there can be no such thing as a water-tight list. That means that some of the subjects could be equally at home as a topic of consultation or as a subject for negotiation — items 5, 6 and 9 for instance, would depend on what particular aspect of the subject was open to discussion. However, other things being equal, it seems likely that items 3, 4, 7, 8 and 9 are the ones for consultation.

STARTING A CONSULTATIVE PROCEDURE

If you do not already have a consultative procedure (with a staff or trade union representative), probably the first step is to consult your staff on what they think of the idea of setting up a consultative committee. Make sure that you explain what the purpose of such a committee would be and emphasise the value you attach to hearing the points of view of staff before you reach decisions. You shouldn't be worried if you don't get a favourable response at first.

If staff think it is a good idea, your next step is to organise some system enabling staff to elect their representatives on the committee. Once this has been done, it is important to get the first meeting off the ground. This is the key one: it should establish the true purpose of consultation and management's commitment to it. It's a good idea to produce a summary of the discussion and circulate it to all staff and other managers as soon as possible after the meeting.

An agenda is an important part of the arrangements to be considered and all staff should be encouraged to submit their ideas of subjects to discuss. It is a useful management tool for the committee to establish a number of standard subjects to discuss at each meeting, such as the state of business; new developments; health, safety and hygiene matters; and staff turnover. The committee should determine the frequency of its meetings; quarterly meetings would indicate that a real importance was attached to staff consultation. You should take all possible steps to ensure that the procedure is used to the full benefit of the organisation and of the staff.

Where a trade union is recognised

If your company recognises a trade union, establish consultative procedures with the trade union representatives. (As you will see in Section 8, employers are obliged to consult with trade-union-appointed health and safety representatives, where they exist, on health and safety issues.)

NEGOTIATION PROCEDURES

In one sense you could say that negotiating procedures are the forerunner of all procedures since, in theory, all other procedures are negotiable. However, in practice, this is unlikely to be so, even in the most highly unionised industries. One of the difficulties experienced by many companies is in determining how far, if at all, to keep the negotiating and the consultative arrangements separate. Those who argue for separation say that matters for consultation are much wider in scope and, if kept separate, are acknowledged by both sides as being non-negotiable — at that stage, at least. Others argue that many consultative subjects soon become negotiable issues and therefore should not be separated in the procedure for dealing with them.

Negotiation procedures are concerned essentially with the determination of the pay and conditions of staff. Where a trade union is recognised, the extent of the union representative's negotiating rights will be defined and include the subjects over which negotiations will take place, the steps by which agreement is to be sought and what happens if there is a failure to agree. That is as near as many companies get to a *formal negotiating procedure*. In practice, negotiations take place and the repetition of the practice is the normal manner in which a *tacit procedure* is arrived at.

Negotiating procedures do not conform to standard patterns and it is most unlikely that you will come across a model procedure as you might for some kinds of procedure.

It is not the role of this unit to look at the finer points of negotiating and industrial relations. However, advice is readily available from employers' and trade associations and from the Advisory, Conciliation and Arbitration Service (ACAS).

Consolidate what you have established in this section by:

- *discussing consultation and negotiation procedures with a colleague or friend who is involved in consultation and/or negotiation*
- *reading from Employee Relations either chapter 14 which looks at consultation, or chapter 2 which looks at some of the organisations involved in negotiation procedures, or chapter 21 which looks at action to bring about good communication and consultation.*

This section ends here. Take a break before starting Section 3 which deals with discipline, grievance and dispute procedures.

RIGHTS AND RESPONSIBILITIES

SECTION 3 Discipline, grievances and disputes



After completing this section you will be able to:

- ▶ recognise the value of disciplinary, grievance and disputes procedures in personnel management
- ▶ devise suitable disciplinary and grievance procedures for your workplace.

THE MEANING OF DISCIPLINE

The very word 'discipline' has an unfortunate connotation because it usually suggests some form of punishment. Yet, if you check a dictionary, you will find several meanings — and probably the last meaning given is that of retribution. As a manager, it is important you concentrate on the real primary meaning of discipline as a form of instruction — a constructive measure used to help someone change his or her behaviour to a more acceptable, more productive form. The idea of punishing someone should be forgotten.

Most managers would readily agree that it is part of their everyday duties to supervise staff, control staff and, if necessary, correct staff. People make mistakes, behave carelessly or wilfully, or refuse to conform to the standards that have been set. In such circumstances it is a manager's job to correct, to reprimand, to take steps to put matters to rights. This type of everyday discipline is not dealt with here. Disciplinary procedures exist to deal with the person who needs more than a word-in-the-ear approach. A more formal approach must be taken with this sort of 'offender'.

If there is one feature that characterises the whole of this subject, it is the need to be fair. Staff themselves have a strong interest in seeing that discipline is maintained — they see it as fair that their safety should not be jeopardised, that their pay should not be affected by a maverick who will not conform to standards that they happily accept as reasonable. In addition, everyone seeks fairness in the consistency of treatment he or she receives.

For these reasons, clearly established rules and standards of work behaviour, and an agreed method of dealing with offenders are matters of common interest to employer and employees alike. This is the true justification for having a disciplinary procedure.

The law does not specify what disciplinary rules and procedures an employer should adopt, but an employee's written statement of terms and conditions of employment should specify disciplinary matters.

Refresh your memory by reading the first paragraph of chapter 15 of *Employee Relations*.

WORKPLACE RULES

Most people like to know what the 'rules of the game' are and accept that the alternative is chaos. At work there is always a set of standards with which people are expected to conform — what people do or don't do. Many standards are not written down at all, but they are there and staff are aware of them.

However, it is not really feasible to expect that the element of fairness will prevail or be seen to be applied if all the rules are left to a general awareness. It therefore makes sense to codify company rules, not in the effort to cover everything comprehensively, but to provide a framework within which everyone can work comfortably.

Under the following general headings, write down some sample rules that you believe should apply in your workplace:

1. Punctuality

2. Respect for other staff

3. Respect for property (employers' and employees')

4. Safety of colleagues and customers

RIGHTS AND RESPONSIBILITIES

The range of your answers is likely to be wide, but may include some of the following points.

1. Need to report to work in accordance with duty rota.
Observation of stated lunch and other breaks.
Rules about changing times of work and on whose authority.
2. Rules on physical violence and abusive language.
Maintenance of good hygiene standards.
No mis-use of company and staff noticeboards.
Rules on gambling.
3. Rules on abusing, defacing or damaging property.
Use of company telephone for personal calls.
Use of company vehicles.
Theft of company or colleague's property.
Mis-use of company time.
4. Rules on smoking.
Rules on safety at work.
Rules on hygiene and fire regulations.
Rules on security.

BREAKING THE RULES

Once you have sorted out what you consider to be a sensible sample of the main rules to be observed, it is useful to consider the categories into which breaches of those rules might fall, depending on their degree of seriousness. Three categories might be considered:

- minor offences
- serious offences
- gross misconduct.

The value of this approach is that when you come to devise a procedure for handling matters of discipline, you can arrange it around this categorisation. Of course, these are not watertight compartments: a person who is late for work may have committed a minor offence. But if he or she persists in being late then that can soon be considered a serious offence.

Extract from a company disciplinary procedure

1. The rule is that staff must start work on time and continue to work through until the end of the shift.
2. The offences are defined as:
 - a) two days unauthorised absence in any four week period or less, and
 - b) lateness in excess of the three minute allowance on more than one occasion in any one week.
3. The following are the disciplinary measures to be applied:

First occasion
Caution by the unit manager to be recorded in department's records.

Second occasion
Warning by unit manager in presence of shop steward and a written warning sent to offender by the personnel manager.

Third occasion
Suspension from work for two days without pay by the unit manager in the presence of the shop steward.

Fourth occasion
Suspension from work for two days without pay by the unit manager in the presence of the senior shop steward.
4. All warnings under the procedure will be deleted from the records after eight working weeks in which there have been no instances of unauthorised absence or lateness.

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Clearly, this company has a problem with lateness and absenteeism among its staff or the nature of the operation is such that work is seriously hindered if someone turns up late or fails to turn up at all. The following points of value are illustrated.

- It makes a clear distinction between rules, offences and disciplinary measures.
- It indicates that the treatment to be accorded to minor offences may be quantified.
- It illustrates how repetition of offences incurs increasingly severe punishment.
- It provides for the commonest sanctions: warning and suspension.
- It differentiates between the formal verbal warning and the more serious written one.
- It allows for the registering of sanctions.
- It provides a 'clean slate' provision to encourage offenders to reform.

WARNINGS

The ACAS code of practice is the main source of advice on warnings. One important point to note is that a written warning should never be given until the offender has been interviewed formally and given a chance to have a say. It is at this stage that he or she should be told formally where he or she is showing a short-fall in standards, with the evidence to support it. The employee's explanation should be sought. The ideal is to get a two-way conversation flowing to cover all the points necessary and to ensure that the employee knows what has to be done to improve. Then the warning letter acts as a written note of the interview.

Suppose that the extract from the disciplinary procedure on page 24 is part of your company's procedure. With the ACAS code of practice to assist you, draft below a first written warning letter to one of your staff. Then, imagine that the employee's time-keeping has not improved and draft a final warning letter. Use any imaginary detail to help.

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No sample letters are supplied since we all tackle letter writing in our own way. However, check your attempt against this list.

- Did you refer to an informal chat, held earlier, to try and stop the lateness?
- Did you specify the date of the formal interview leading to the letter?
- Did you specify the occasions of lateness resulting in the disciplinary interview?
- Did you refer to any explanation given by the offender and repeat what you replied during the interview to the reasons/excuses/explanations given?
- Did you specify precisely what needed to be done in future?
- Did you give a time limit for improvement and for a review?
- Did you warn what would happen if no improvement was made?
- Did you remind the offender of the appeal system if he or she was dissatisfied with your findings?

Remember that discipline is a management tool which can work well in increasing the efficiency and profitability of your workplace, provided it is seen primarily as a means of instruction. If it is used as a means of punishment, then it is likely to operate against your best interests.

Use the ACAS code of practice to measure your present disciplinary procedure with a view to putting right what may need doing. If you do not have a proper procedure, then use the code to assist you in drawing one up.

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Continuity of employment only applies when 16 hours or more a week are worked regularly, and not if it is a turn-and-turn-about arrangement with the alternative week below 16 hours. Mrs Jones would not be allowed to aggregate or average her hours and therefore she would not be entitled to have her claim heard, unless her period of continuous employment exceeded five years. If this was the case, she would fulfil the minimum eight hours a week requirement.

GRIEVANCE PROCEDURES

A grievance procedure allows an individual at work to make a complaint or raise a query affecting working conditions — such as pay, hours and holidays — and lays down the steps to be taken to resolve such a grievance.

An employee's written statement of employment must cover disciplinary matters (see pages 9 and 20). The statement must include the details of whom the grievance is to be taken to and all the steps involved. To that extent, it can be said that a grievance procedure is required by law. But it is also good management practice to provide some outlet for an aggrieved individual to air a worry or complaint. If not, then staff who feel hard-done-by will simply leave. Or, if they fear unemployment, they may stay on — but in doing so they are likely to moan to the wrong people, spread their dissatisfaction and probably work with little or no enthusiasm.

Most grievances can be settled fairly quickly and successfully. It is often a matter of correcting a misunderstanding. It may provide the manager with information about something that has gone wrong and of which he or she was unaware. Or it may just be a chance to get something off the employee's chest. Even in the few cases which are not happily resolved, at least the individual employee can see that his or her concerns have been noted by management.

Grievance procedures should be tailored to the requirements of the establishment and the staff employed there. They should provide:

- the facility to take the complaint, in the first instance, to an immediate superior
- the procedure for taking the matter to another level of management if it is not resolved at the first level
- a built-in timescale at each level
- the right for the employee to be accompanied at some stage by a trade union representative or friend
- a clear indication of where the final decision lies.

Generally, the role of supervisors or first line managers is crucial. Their responses will be conditioned both by their ability to settle the matter and by their readiness to do so. A lot depends on what authority they have in the subject of the complaint: they may, for instance, have no say at all in matters of overtime. But good supervisors will keep involved with the issues even if they do not have the authority or ability to resolve the problem.

Guidelines on preparing a grievance procedure for non-union employees

1. The procedure must be available, in writing, to the employee, his/her superior(s), his/her workplace representative (if any) and the company management.
2. Where possible, the procedure must form part of the employee's personal copy of the written statement of terms and conditions. Otherwise, it must be accessible at all reasonable times.
3. In the event of a grievance arising, either as a result of a management decision to alter the means, method, material or other aspect of the job, or as a result of a claim put forward by the employee for some change in the terms, conditions, fringe benefits or pay associated with his/her job, then the arrangement existing prior to the grievance shall operate until such time as that grievance is settled satisfactorily. Notwithstanding this, the employee shall be required to accept such reasonable change in his/her job as is specified in the written statement of terms and conditions of employment.
4. In the first instance, the grievance shall be discussed with a view to resolution by the employee's immediate superior. This should take place as soon as possible after the occurrence of the grievance:
 - a) The maximum time lag should be days.
 - b) An account of the meeting setting out arguments on both sides and the factual background and the outcome shall be put in writing within hours of the first stage, by the supervisor. This report is to be signed by both parties.
5. In event of a failure to agree, there must be one or more further stages, involving progressively higher heads of management.
6. Provision must be made for external arbitration or conciliation — to be co-determined with the employees — and use should be made of local ACAS officers and other advisory personnel.
7. In the absence of an arbitration stage, failure to arrive at an agreement after the final procedure stage shall entitle the parties to take such other stages as they consider appropriate to arrive at a mutual conclusion.

Compare your grievance procedure with the guidelines opposite (designed for non-union staff). Can you identify any points which might usefully be incorporated in your procedure? What advantages and disadvantages do you see in including time limits in a grievance procedure? What is your view about recording the stages of the procedure?

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As far as time limits are concerned, it is obvious that individuals want their complaint sorted out as soon as possible, but managers may feel they need time to gather the facts and consider what action to take — and this to be fitted in with other tasks. Time limits commit managers to finding solutions quickly. If they fail to meet the deadline, then the procedure may allow movement to the next stage. Some say that time limits undermine mutual trust. Others claim that they remove flexibility. In the end, the best procedures lay down time guidelines but allow for extensions by mutual agreement.

As far as documentation is concerned, it seems reasonable to expect something to be put in writing if the procedure may be taken to higher levels where little may be known of the claims and evidence in support. In addition, in situations where there is a failure to agree at any stage, the record will clarify the facts and contentions and be helpful at the next stage. Records can help keep track of unresolved grievances; they can help in the analysis of the causes of grievances and of where and why delays in settling them occur; and they can be particularly useful when a settlement is reached to ensure there are no misunderstandings. Finally, a written statement is clearly useful in communicating the outcome of the procedure.

DISPUTES PROCEDURE

A grievance might well affect a number of staff at the same time, such as the temperature of the kitchen or the allocation of overtime. In these circumstances it is possible to invoke a disputes procedure.

A disputes procedure is similar in operation to a grievance procedure, but there is a wide variety of application throughout industry — determined to some extent by the definition of a 'dispute'. In some cases a dispute exists only when a group of staff are affected. In others, as soon as a grievance involves the shop steward then it becomes a dispute. Still others call it a dispute if a grievance is not settled within the company and has to go to an external agency for resolution. Finally, some call it a dispute only when there is a breakdown in procedure.

In practice, a grievance procedure can easily be used or adapted to form a disputes procedure.

A final point on this procedure: if you find yourself in consultation with a trade union about establishing a procedure, whether to be called a grievance or a disputes procedure, you are likely to find yourself being asked to incorporate a 'status quo' clause.

If you are not familiar with the meaning of the term 'status quo', look it up in a good dictionary. What does it mean to you in employee relations terms? Note why you think trade unions are likely to be anxious to incorporate a 'status quo' clause in grievance/disputes procedures.

RIGHTS AND RESPONSIBILITIES

'Status quo' is a Latin phrase that means 'no change'. In fact the full phrase is 'status quo ante' and this means 'the state of things as they were before'. In industrial and employee relations terms, what it means when it is incorporated in a procedure is that the conditions applying immediately before the grievance or dispute was raised will continue to apply until the procedure is exhausted.

Trade unions are usually anxious to have a 'status quo' clause because they believe that many disputes at work are caused by management, such as those involving discipline, manning and redundancies. If there is no status quo, then that allows management to initiate changes and to require staff to operate those changes (even though they may be subject to dispute) while the procedure is gone through. Unions consider that unfair. So, in a nutshell, the unions often argue that it is their role to control working conditions as much as possible to protect workers from insecurity and any adverse effects of management decisions. They also argue that they believe in the principle of mutual agreement or joint regulation and having a status quo during negotiations is a practical way of ensuring that decisions are mutual and not made unilaterally by management.

This section ends here. Take a break before beginning Section 4 which deals with procedures for staff who leave your employment voluntarily or who have to be dismissed.

RIGHTS AND RESPONSIBILITIES

SECTION 4 Dealing with staff who (have to) leave!



After completing this section you will be able to:

- ▶ develop practices which use normal staff turnover for the benefit of the operation
- ▶ develop procedures for terminating staff employment which are fair to both the operation and the employee.

REASONS FOR LEAVING EMPLOYMENT

Some staff turnover may be necessary for a healthy business but unnecessary staff turnover will involve the operation in extra costs and reduce efficiency.

What do you know, or suspect to be, the most common reasons for staff leaving your/your employer's employment? (Do not include the 'unavoidable' reasons such as retirement or a move away from the district.)

Dealing with staff who (have to) leave!

Your list will vary according to a variety of local factors. Here are some of the most common reasons given by staff for leaving:

- the need to improve or enlarge the job
- an unsatisfactory level of pay
- lack of training and development
- a personality clash
- dislike of awkward or unsocial hours
- the distance and/or cost of travelling to work
- sense of being fed up.

Many organisations find it useful to interview all staff who propose to leave 'voluntarily' in order to establish the reasons and record them in their staff turnover file. Here are some guidelines:

- Make sure you have found out as much as you can about the leaver and have his/her personal record at hand.
- Start by expressing genuine regret, if that is valid.
- Explain that the interview is to try to identify any cause of dissatisfaction which you may be able to rectify for the benefit of those staying on. Explain that you are not seeking to dissuade the employee from leaving — although remember that he or she may really be seeking reassurance about his or her value and may wish to be dissuaded!
- Prepare a number of open-ended questions which will help the interviewee to open up and be honest with you in describing the reasons for leaving.
- Whatever happens, do not engage in argument or allow the conversation to become heated. Maintain a friendly atmosphere throughout.
- Complete the interview with thanks, if appropriate, for services given. In any case wish the leaver success in whatever he or she plans to do next.

STAFF WHO DO NOT LEAVE BY THEIR OWN CHOICE

It is not always the employee who decides to finish his or her employment. From time to time, organisations find it necessary to dismiss staff or to make them redundant. The legal implications of dismissal and redundancy are far-reaching and require special procedures and management skills. The rest of this section looks at dismissal and redundancy in detail. You are recommended to read all of chapters 16 and 17 of *Employee Relations*.

WHAT DISMISSAL MEANS

The law protects employees against unfair dismissal. Under certain circumstances, an employee can claim unfair dismissal at an industrial tribunal. If the dismissal is found to be unfair, the employer may have to financially compensate, re-employ or re-instate the dismissed employee.

Read the section on industrial tribunals on pages 13 and 14 of *Employee Relations*.

As you can see, it is important to be able to recognise a dismissal!

The Employment Protection (Consolidation) Act 1978, describes how dismissal covers three separate situations:

1. Termination of employment by employer, with or without notice. For example: 'You're fired immediately.'
2. Non-renewal of a fixed term contract when it expires. For example: 'When you have finished your three months' employment, as agreed, you will no longer be required here.'
3. An employee terminates his or her contract, with or without notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct. For example: 'There's no way I'm going to continue working for you now that you've cut my hours from 30 to 10 a week!'

RIGHTS AND RESPONSIBILITIES

1. If you have hedged your bets with this answer by saying that it would depend on all the circumstances, then you are probably right. This holds good in most cases. However, in this case a tribunal is likely to have found that this was not a dismissal, not only because the words were spoken heatedly but also because the words themselves are ambiguous. A dismissal should be clear and unambiguous.
2. This may be simply a departure by a member of staff and therefore no dismissal. The employee may, however, subsequently claim constructive dismissal (see page 43). In that case, it is possible that the words would signify dismissal in the legal sense since the words are ambiguous. Presumably, the employer assumed the person was leaving by resigning.
3. On its own, this phrase could mean anything from: 'Leave the office now, can't you see I'm busy', to: 'Leave the company's employment immediately'. Only the circumstances in which the words were spoken can determine whether or not there has been a dismissal.
4. This looks like a forced resignation. If it is, then that is a dismissal.
5. This is not a dismissal because there has been no threat of actual dismissal.
6. A very important rule of law was established by the Divisional Court in 1967 in the case of *Morton Sundour Fabrics v Shaw*: there is no dismissal unless an employer specifies the date on which the employment will end or the date can be ascertained positively. In this case, therefore, there is no dismissal.

The first important practical lesson is to ensure that both you and the employee concerned recognise clearly when either of you seek to terminate the employment contract. If you are the one to sack, use words which are unambiguous. Follow this up with a confirmatory letter.

Read carefully pages 84 to 91 of *Employee Relations*, paying particular attention to legal requirements indicated by ☐ against the paragraphs on: unfair dismissal, claiming unfair dismissal, constructive dismissal, wrongful dismissal and dismissing.

CLAIMING UNFAIR DISMISSAL

As you have just read in *Employee Relations*, to qualify to claim unfair dismissal, a person must be an employee. Unfortunately, there is no simple answer to the question: 'Who is an employee in the hotel and catering industry?' Here is an example of the way the law examines this problem.

Mr W was appointed as a bar steward 'on a self-employed basis', responsible for his own tax and national insurance. He took money from the till to pay himself and the bar staff and he hired and fired staff himself. The Employment Appeal Tribunal said: 'If you had asked Mr W while he was running the club bar, "Are you your own boss?" could he honestly have given any other answer than "No"? In our judgement, clearly not.'

In other words, people who are self-employed and pay their own tax and national insurance contributions are, in some circumstances, counted as employees. To decide it may help to ask the following:

- Does this person give every appearance of being an employee: could he or she refuse an order?
- Does this person appear to be in business on his or her own account?

You will have noticed while reading *Employee Relations* that the general rule is that staff must work for at least 16 hours per week in order to be able to claim unfair dismissal. This means that either they actually work 16 hours, or they work fewer hours but are contracted to work at least 16 hours. Where the hours vary from week to week, it is the 'normal' hours that count, not the average. One variation on this is that an employee with a minimum of five years' service will qualify if he or she can show that he or she works a minimum of eight hours per week. On the other hand, the law also allows that where a person used to work at least 16 hours and then agreed to a contract change which allows at least eight hours of work, the first 26 weeks of the changed contract can count in working out the necessary two years' qualification for unfair dismissal rights.

A final point worth noting is that if there is anything that could be considered illegal, either in the contract itself or in its performance, then the employee will have no right to claim unfair dismissal. This type of exclusion arises where an employment contract is in some way 'tainted'. It has a special relevance to some parts of the hotel and catering industry where payment is made without reference to Inland Revenue requirements!

Mrs Jones had worked for several years in a pub on a regular basis of three days one week (20½ hours) and two days the next (12½ hours). When she was dismissed, her employer defended the claim of unfair dismissal on the grounds that her two-day weeks broke her continuity of employment and therefore she was not entitled to claim unfair dismissal. What do you think? Note your reasons below.

CONSTRUCTIVE DISMISSAL

These are the most common cases to come before industrial tribunals.

The first ingredient of constructive dismissal is that there be a repudiatory breach by the employer. The breach of contract can be of either an *express term*, like agreed wages, or of an *implied term*, such as mutual trust. The second necessary ingredient is that the employee must react promptly. If he or she does not leave shortly after the conduct of which he or she complains, then it can be held that the employee has elected to affirm the contract in its changed form.

Tick those of the following which you think are likely to be cases for constructive dismissal. Against each one that you have ticked indicate with an E or an I whether it is an express term (E) or an implied term (I).

1. Unilateral reduction in basic rate of pay.
2. Unilateral alteration of the formula for calculating pay.
3. Change of contract and demotion.
4. Non-payment of outstanding overtime.
5. Insistence on employee working non-contractual hours.
6. Withdrawal of free transport facilities with consequential cost to the employee of £X per week and an extra hour's travelling time.
7. Reduction in bonus earnings amounting to £Y per week.
8. Saying to a long-serving member of staff: 'You can't do the bloody job anyway!'
9. Reporting a member of staff to the police for suspected dishonesty without discussion with the accused member of staff.
10. Abusing a member of staff in conversation with a third party.

✓	E or I

RIGHTS AND RESPONSIBILITIES

1, 2, 3, 4, 5, 8, 9 and 10 are likely to give rise to claims of constructive dismissal. 1 to 5 look like clear cut breaches of express terms in most staff contracts. 8, 9 and 10 are more likely to be seen as breaches of implied terms of a contractual relationship with an employer.

WHAT IS UNFAIRNESS?

You will recall the list of 'potentially valid' reasons for dismissing an employee given on page 84 of *Employee Relations*. Dismissals will be judged as fair only if:

- the employer can show the reason or principal reason for dismissal
and
- that the reason is 'potentially valid'
and
- the tribunal considers that the employer acted reasonably in treating the reason given as being sufficient for dismissal.

It is recognised that there is a band of reasonableness. Lord Denning said (*British Leyland v Swift*, 1981): 'one employer might reasonably take one view and another quite reasonably take another view.' The factors considered important by a tribunal include:

- the size and administrative resources of the firm
- contractual rights and duties
- consistency of treatment
- employee's length of service and status
- the manner in which the dismissal was carried out.

For a number of years Mary worked for eight hours on a Monday and Tuesday and four hours on a Wednesday while Jane worked four hours a day for a five day week. One day their manager informed them that they would be required to change their working hours to four hours on a Thursday and eight hours on a Friday and Saturday because the pattern of trading had changed. Both women complained that this clashed with their personal circumstances and they both refused. They both left and claimed constructive and unfair dismissal.

Note below how you think an industrial tribunal would regard these claims.

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Often in cases like this, the employer argues that the hours are those set out on weekly rotas and that any variations are similarly noted and exhibited. A tribunal however is more likely to assess the contractual arrangements by measuring what hours the women had actually worked. Even if there had been reference to variation this would not amount to a right to unilaterally vary the hours of work.

It is also probable that a tribunal would say that an employer's need to deploy staff to best advantage is neither of more or less importance than the personal and domestic circumstances of the part-time employees concerned. To sustain the employer's claim that part-time employees can be required to work 20 hours any time within the 40 hour week, the employer would have to show this clearly in the contract with the staff concerned.

So it is probable that a tribunal would rule there was a fundamental breach of contract by the employer and therefore a case of constructive dismissal. It would also be assessed as an unfair case on the grounds that it was unreasonable for an employer to require part-time staff to work hours for which they had not been contracted and which did not suit their private requirements. (*Brechin Bros Ltd v Kenneavy & Strang*, Employment Appeals Tribunal 1982.)

CAPABILITY DISMISSALS

Any reason which relates to the capability or qualification of employees for performing work of the kind they were employed to do is potentially a fair reason for dismissal. Thus, capability refers to skill, aptitude, health or any other physical or mental quality.

Here are some examples which have been declared 'fair':

- the slow worker
- the worker who, though competent, lacks drive and adaptability for other duties
- the worker who cannot meet his or her manager's raised standards
- the new recruit whose performance does not match promise
- the inflexible and unadaptable worker
- the worker who cannot do the job because of poor eye sight.

Employers do not have to establish in detail the correctness of their belief in the employee's incompetence but only that they have reasonable grounds for it and have taken reasonable steps to verify their conclusions. The test of fairness is a test of the employer's reasonableness.

The Court of Appeal has two tests of a 'fair' capability dismissal:

- the employer honestly believes the employee to be incompetent or unsuitable for the job
- and
- the grounds for that belief are reasonable.

Describe below what you consider an employer might be reasonably expected to show had been done before dismissing an employee on grounds of incapability to do the work he or she was employed to perform.

RIGHTS AND RESPONSIBILITIES

Not only will the tribunal be keen to find out what an employer has done when faced with a seemingly incapable employee, but it will also expect to discover what steps were taken from the outset to minimise the risk of poor performance and to create the conditions which allow employees to carry out their duties satisfactorily. Thus, proper training, supervision and encouragement are essential to the 'fairness' of such dismissals, especially for employees promised a new job with the firm. It may also be apt to see if the employer could have re-deployed the person to a more suitable job.

That apart, the three basic things which will be assessed in these cases are:

- whether there was a proper appraisal/investigation of the employee's weaknesses, and identification of the problems.
- whether there had been any warnings of the consequences of failure to improve
- whether the person had been given a reasonable chance to improve.

DISMISSING FOR MISCONDUCT

Without doubt, most cases of unfair dismissal are ones in which it is alleged that an employee has been guilty of gross misconduct. There is no strict legal definition of misconduct but case law (that is tribunal decisions) show that misconduct need not be 'gross' but 'substantial' in relation to the employee, the job and the surrounding circumstances.

Again, it is for the employer to show that the misconduct was the reason for the dismissal and there was a genuine belief on reasonable grounds after reasonable investigation that the employee's misbehaviour justified dismissal. This means that employers do not need to have conclusive direct proof — only a strong suspicion, reasonably tested.

It is now well established that, to be found fair, a dismissal for misconduct must have been preceded by:

- appropriate warnings
- a thorough investigation of the offence
- informing the person of the complaint
- giving the person the opportunity to state his or her case
- allowing the person to be represented at the final in-house hearing.

If you have not done so already, read the whole of chapter 16 of *Employee Relations*, paying particular attention to the paragraph on avoiding problems, and Appendix V.

REDUNDANCY

Redundancy is a form of dismissal. In brief, the law defines redundancy as a situation where:

- an employer has ceased (or will cease) to carry on a business for the purpose of which, or in the place where, an employee was employed
- or
- a diminished workload has reduced (or will reduce) the need for employees carrying on particular work in their workplace.

An employee's redundancy dismissal must be wholly or mainly attributable to one of the 'redundancy situations' above.

Employees are entitled to compensation through the Redundancy Payments Scheme (RPS), provided they fulfil certain service and age criteria.

The redundancy payment due is calculated on a formula of percentages of a week's pay for each year of continuous service (up to a maximum of 20 years) and the employee's age. Overtime does not count unless there is a contractual obligation for the employer to provide, and the employee to carry out, such overtime. The pay is calculated as the normal wage, excluding benefits in kind, but can include tips or service charge paid by customers provided they are collected by the employer and distributed among the staff. In the case of shift workers whose remuneration varies week by week, the week's pay that counts is the average number of hours worked in a week multiplied by the average hourly rate.

The calculations are quite complex, but the Department of Employment will give detailed guidance.

Read chapters 17 and 18 of *Employee Relations*.

REDUNDANCY PROCEDURES

Whenever an organisation decides it must reduce its staffing there is always upset, not least for those whose posts are declared redundant. In a world that is no stranger to recession, many managers feel that it is realistic and in the best interests of everyone to face that possibility with some form of contingency plan. That usually means having a redundancy procedure.

Bearing in mind that a redundancy procedure is best considered as a general contingency plan rather than a list of detailed arrangements, make a list below of the main points you would wish to see incorporated in any redundancy procedure that might be agreed for your workplace.

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The points you are likely to wish to see covered in a redundancy procedure will include:

- an agreement to consult trade union/staff as soon as redundancies seem likely
- actions to be taken to avoid compulsory redundancy
- agreement on warning period to be given to staff affected by the selection criteria
- additional compensation
- an appeals procedure.

This section ends here. Take a break before beginning Section 5 which deals with the different types of unfair discrimination and equal opportunities. If you have attended the HCTB course *Rights and Responsibilities* you should complete the assignment *The Globe Hotel*.

RIGHTS AND RESPONSIBILITIES

SECTION 5 Non-discrimination and equal opportunities



After completing this section you will be able to:

- ▶ recognise different types of unfair discrimination
- ▶ formulate an equal opportunities policy and procedure for your workplace.

KINDS OF DISCRIMINATION

By now, you should be aware of the value to a manager of operating fair, even-handed procedures. The Race Relations Act, 1976; the Sex Discrimination Act, 1975, amended by the Sex Discrimination Act, 1986; the Equal Pay Act, 1970 and the Equal Pay (Amendment Regulations), 1983 make the principles of equal treatment a legal obligation in employment.

By and large, employers can appoint who they want on their own criteria without interference from the law. But it is illegal to discriminate against anyone on the grounds of their sex, marital status, skin colour or race — regardless of your motives for doing so. Of course, recruitment and selection by definition is discriminatory — you choose A in preference to B, presumably because you think A will do a better job. It is *unfair discrimination* which is illegal.

Unfair discrimination can be direct or indirect. An example of direct discrimination would be where a company advertised for bar staff and specified that blacks and/or women should not apply. Indirect discrimination would occur if, for example, you questioned a female job interviewee about her plans to start a family. You should avoid any practices which indicate an intention to discriminate unfairly. For example, beware of laying down conditions which are not justified by the job, which considerably fewer women than men would fulfil — 'candidate must be at least 5ft 11in tall'.

Employees who feel that they are, or have been, the subject of unfair discrimination or inequality can take their case to an industrial tribunal.

SEX DISCRIMINATION

In brief, the law forbids discrimination on grounds of sex or marital status, whether done directly or indirectly, before or after appointment. It is therefore illegal to discriminate in the way you provide opportunities for promotion, transfer and training, or by not offering equal access to benefits, facilities or services that go with the job, or by subjecting women at work to detrimental treatment.

Here are a few examples of actions that fell foul of the law:

- opportunities for promotion for higher posts were advertised in a magazine read mostly by men (*Woodcock v Boots the Chemist*, 1976).
- failing to offer a woman a supervisory post because she was married and had three young children at home (*Braine-Hartnell v Merton*, 1978).
- free travel facilities for men's spouses but not for women's spouses (*Simpson v National Carriers Ltd*, 1977).
- dismissing a woman employee after she had passed her 60th birthday as part of a policy of retiring men at the age of 65 and women at the age of 60. It is now unlawful to set different retirement ages for men and women in comparable positions (*Marshall v Southampton and South West Area Health Authority*, 1986).

There are exceptions to this law. For instance, firms with five or fewer employees are exempt. There are also exceptions where being a man or woman in itself is a genuine qualification for the job. This applies to posts like lavatory attendant, and to the kind of place where it is impracticable for staff to live anywhere else and the only accommodation available is one sex only and it would be unreasonable to expect the employer to provide such separation.

Here are the guidelines given by the Employment Appeal Tribunal to test a claim by an employer that discrimination is justifiable.

1. The reason for the discriminatory requirement or condition must be genuinely necessary.
2. All the circumstances, including the discriminatory effect of the requirement or condition if allowed to continue, must be weighed up.
3. The need for the requirement or condition must be weighed against its discriminatory effect.
4. Convenience to the employer is of no avail; there must have been an attempt to find another, non-discriminatory way of achieving the same end.

RACIAL DISCRIMINATION

Simply put, the law forbids discrimination on racial grounds. These grounds cover colour, race, nationality or ethnic origin. You will notice that it does not cover religion, but it has now been decided that Jews and Sikhs are such by ethnic origin and therefore are protected from discrimination on those grounds.

Here are some examples of racial discrimination which broke the law:

- a white woman was refused a job because her husband was West Indian (Wilson v Steelwork Co, 1978).
- a firm advertised for staff but excluded all applicants with a certain postal district address (where 50% of the inhabitants were coloured) (Hussein v Saints Complete House Furnishings, 1979).
- a company which operated a 'no beards' rule (Singh v Rowntree Mackintosh, 1978).
- a black person was offered a job, but the offer was withdrawn after a group of white employees objected (CRE v Westminster City Council, 1986).

As with the sex discrimination rules, there are exceptions which give an employer a good case to argue against any claim. The most interesting one for the hotel and catering industry is where the job involves working in a place where food or drink is provided for the public and is in a particular setting for which a person of a particular racial group is required for reasons of authenticity; hence Chinese serving staff in a Chinese restaurant.

EQUAL PAY

In brief, this law establishes the right of men and women to equal treatment as regards terms and conditions of employment, provided they are employed on the same or broadly similar work or work of equal value. If the work is not the same, a woman can still claim equality of pay with a man if the demands made on her are the same as that on a man in the same employment. These demands can be in terms of effort, skill or decisions made. Where part-time workers, who are mainly female, are doing the same work as full-time employees, they should receive the same rate of pay (pro rata).

Consider each of the following advertisements. Does it comply with the legislation outlined? Give your answer with reasons below.

Waiter required. No experience needed. Training will be given.
Apply to ...

Vacancy for a **Front of House Supervisor**. Must hold relevant SCOTVEC qualifications. Apply to ...

RIGHTS AND RESPONSIBILITIES

Both advertisements break the law.

It is not necessary to invent new job titles, such as 'waiting person' but it is necessary to show that the post is open to men and women. You could say: 'Waiter (male or female) required.' Or, better still: 'Serving staff required.'

You should avoid setting criteria where length of residence or experience in the UK or countries within the UK is required. If a particular qualification is needed, you must make it clear that comparable qualifications would be equally acceptable.

WORKING TOWARDS EQUALITY

It would be naive to believe that because of the legislation outlawing unfair discrimination, every company now provides equal opportunities for all. Unfortunately, there are still many firms, especially in the hotel and catering industry, who do not seem to realise the value to the business of utilising the talents and resources of people irrespective of their sex or race. Equal opportunities are a legal requirement. But they also make good business sense; they are an essential part of good management.

Outline below an equal opportunities policy for your workplace and indicate how it would be put into practice. Before starting, you will probably find it helpful to read pages 52 and 54 and chapter 10 of Employee Relations.

RIGHTS AND RESPONSIBILITIES

There can be no right answer but as a minimum, the policy should indicate a total commitment to equal opportunity and be communicated clearly to everyone at work. Putting it into practice will vary from workplace to workplace.

You are recommended to obtain copies of the following booklets (for addresses see Appendix II in *Employee Relations*).

from the Commission for Racial Equality

- *Code of Practice in Race Relations*
- *Equal Opportunity in Employment: A guide for employers*
- *Monitoring an Equal Opportunity Policy: A guide for employers*

from the Equal Opportunities Commission

- *The Sex Discrimination Act and Advertising.*

This section ends here. Take a break before starting Section 6 which deals with individual rights of trade union membership.

RIGHTS AND RESPONSIBILITIES

SECTION 6 Trade union membership — individual rights



After completing this section you will be able to:

- ▶ recognise the rights of individuals to join or take part in a trade union (or not to join or take part in a trade union)
- ▶ recognise the pitfalls of discrimination, victimisation or similar actions short of dismissal.

RIGHTS OF TRADE UNION MEMBERSHIP AND NON-MEMBERSHIP

Under the Employment Acts 1982 and 1988 an employer may not dismiss, or take action short of dismissal (such as discrimination or victimisation), against an employee with the intention of :

- preventing, deterring or penalising the employee for belonging to or intending to join an independent trade union
- preventing or deterring the employee from taking part in the activities of such a union at any appropriate time, or penalising him or her for doing so
- compelling the employee to remain or become a member of any union
- requiring the employee to pay some other body, usually a charity, as an alternative to belonging to a trade union

irrespective of the hours the employee works or the length of his or her service.

To win a case claiming action 'short of dismissal' an employee would have to show that:

- there was some 'action' against him or her to prevent or compel union membership — this covers a multitude of sins under the heading of victimisation or discrimination
- the action took place
- the action was against the employee as an individual rather than against the union as a whole
- the action was to deter or discourage union membership or activity.

List below some actions which an employer might take which could be illegal by being 'actions short of dismissal'. It may help to recall any stories you have been told or read about in which employees were victimised or discriminated against by their employer. Use your imagination too!

RIGHTS AND RESPONSIBILITIES

Here is a selection of actions that have been found by industrial tribunals to be 'actions short of dismissal':

- A decision not to promote an employee.
- The demotion of a manager to an assistant manager's post.
- Transferring a shop steward so that he had less contact with employees.
- Transferring an employee to a less satisfying job and where there were less tips.
- Not completing an employee's annual appraisal form.
- Preparing an adverse report to be sent to a promotions board.
- Refusal of a car-parking facility to an unrecognised union member.
- Threat of disciplinary action.
- Upgrading others but not the complainant.
- Threatening to close down the business rather than recognise the union.

This section ends here. As this section was short, you may wish to begin Section 7 immediately. It deals with time off and maternity rights.

RIGHTS AND RESPONSIBILITIES

SECTION 7 Time-off and maternity



After completing this section you will be able to:

- ▶ recognise the rights of employees to time off work
- ▶ decide when an employee is entitled to paid time-off
- ▶ decide when to make maternity payments.

RIGHTS TO PAID AND UNPAID TIME-OFF

The law specifically allows staff to take time off from work in certain circumstances, sometimes with pay and at other times without pay. To qualify for this right, employees must work for at least 16 hours a week, or for eight hours or more a week if they have five years' service:

- a) *Trade union duties.* Officials of recognised trade unions are entitled to take time off with pay to carry out their duties and to undergo training for such duties. The amount of time allowed is to be 'reasonable'. (An ACAS code of practice gives guidance on what 'reasonable' means, see below.) In addition to these officials, a recognised trade union has a right to appoint safety representatives. These too have the right to carry out their safety duties and be trained in them.
- b) *Trade union activities.* All members of a recognised independent trade union have the right to take time off, but without pay, to take part in trade union activities. (The ACAS code of practice provides guidance.)
- c) *Public duties.* All staff who are engaged in public duties, such as JP, local authority councillor, member of a statutory authority (eg water) or school governor, have a right to unpaid time off to attend to their duties.
- d) *Looking for work or re-training.* A member of staff who has a minimum of two years' service and who has been given notice of redundancy, is entitled to take reasonable time off in order to look for another job or to arrange training. In this case, since the maximum award a tribunal can make if you fail to allow this right to redundant staff is two-fifths of a week's pay, it seems as if your obligation to give paid time off is limited to two days.
- e) *Ante-natal care.* Women are allowed 'reasonable' time off with pay. This is regardless of their hours worked.

Read the section on time off work on pages 48 and 49 of *Employee Relations*.

Obtain a copy of the ACAS code of practice *Time off for Trade Union Duties and Activities* (available from Her Majesty's Stationery Office).

Imagine you are the manager of an operation where an independent trade union is recognised. Briefly note below what you would do in each of the following situations.

- 1. Jack is branch secretary of his union. He asks you for paid time off to attend a meeting of branch officials where a union organiser is going to explain the financial administration of the branch.*

- 2. Tom, the shop steward who negotiates with you on only minor matters (he is really the liaison man between the staff and the full-time officer who usually negotiates with you), asks you for two weeks' paid time off to attend a shop steward's course. You offer him one week paid and the other unpaid. He claims a right to pay for both weeks.*

- 3. Mary, a union member, tells you that the union is holding an official party to say farewell to a retiring trade union official. She asks to take unpaid time off to attend.*

- 4. For some time you have allowed Joan time off on Thursday mornings to carry out her duties as a JP. You had arranged the work and rotas accordingly. Joan now asks you if she can change this arrangement to a Tuesday because that is a more interesting day in the courts.*

- 5. You have given notice of redundancy to Bill. He requests time off to look for other work and to attend an interview with another firm. You ask for proof of this appointment but he refuses to give it.*

RIGHTS AND RESPONSIBILITIES

1. Since this meeting cannot be construed as one which affects the industrial relations in your company, you would be entitled to refuse this request for paid time-off.
2. Since such a course is likely to be very relevant to Tom's role he would be entitled to take both weeks on full pay.
3. Again, Mary is within her rights to expect unpaid time off for this function since it is an official union one, albeit of a social nature. The 'activities' involved in this right are to be widely interpreted.
4. A lot would depend on what Joan's request involved in terms of re-arranging work schedules. If it would cause undue disturbance, you would be entitled to refuse this request by Joan.
5. The ACAS code of practice certainly advises those who seek time off to make arrangements with the employer as early as feasible. But you have no right to demand proof that the request is a genuine one. After all, if you find that it is not, then it is within your rights to take appropriate disciplinary measures.

MATERNITY RIGHTS

A female employee has four main maternity rights:

- a) not to be dismissed because she is pregnant or for any reason connected with it
- b) to take time off for ante-natal care
- c) to maternity pay
- d) to return to work after confinement.

Read chapter 9 of Employee Relations, paying attention to the legal points outlined and the practical implications for managers. Then answer each of the following questions in the space below.

- 1. Pam was on holiday during the three weeks before the eleventh week prior to her confinement. Is she entitled to maternity pay?*

- 2. At the beginning of the eleventh week, Sally had been working for you for 103 weeks. She continued working for you throughout the following week and then went on maternity leave. Should you pay her the maternity payment?*

- 3. Trudi was one week short of two years' employment at the eleventh week before confinement, but the actual date of her confinement turned out to be a week later than predicted. Is she entitled to maternity pay?*

- 4. Because Mary's baby was born 11 weeks prematurely she did not give you the 21 day's notice required. Is she entitled to the maternity payment?*

RIGHTS AND RESPONSIBILITIES

1. The important point here is that Pam should be in your employment at the eleventh week; being on holiday does not break the employment. Therefore she is entitled to maternity pay.
2. It is a strict requirement that a woman must have been continuously employed for two years at the eleventh week before her confinement. In this case, therefore, Sally would not be able legally to claim a maternity payment. If you did pay her, the Department of Employment would refuse to refund the money to you.
3. In this case, since dates of confinement can vary, Trudy would qualify for payment.
4. The rule about giving the employer three weeks' notice is also a strict one, but as in this case, if it is not reasonably practicable to have given that notice, then payment should be made.

This section ends here. Take a break before beginning Section 8 which deals with health, safety and hygiene and the procedures for protecting the well-being of people and property in your workplace. If you have attended the HCTB course on *Rights and Responsibilities* you should complete the assignment *The Old Hotel*.

RIGHTS AND RESPONSIBILITIES

SECTION 8 Protecting people in the workplace



After completing this section you will be able to:

- ▶ apply health, safety, hygiene and related legislation to your workplace
- ▶ spot health, safety, hygiene and fire hazards in your workplace
- ▶ prepare procedures to protect the well-being of people (and property) in your workplace.

RIGHTS AND RESPONSIBILITIES

Health, safety and hygiene is included in *Rights and Responsibilities* because these areas are a part of a manager or supervisor's personnel responsibilities — even though the degree of responsibility will vary from workplace to workplace. This section looks at the relevant legislation as it affects day-to-day personnel management. It is recommended that at some stage you read all of the HCTB book *Health and Safety in Hotels and Catering*. (Individual references are given at appropriate places.)

HEALTH AND SAFETY

The Health and Safety at Work Act, 1974 puts responsibility upon everyone at work for the well-being and safety of people around them. But the main burden of responsibility falls on employers and their representatives — you!

Read the introduction, chapter 1 and chapter 2 of *Health and Safety in Hotels and Catering*, paying particular attention to the duties of employers. Make a mental list of the things for which *you* have responsibility: they are likely to include conditions, equipment and practices.

You will recall that it is the general duty of employers to ensure, so far as is reasonably practicable, the health, safety and welfare of their employees and other people affected by their work. Your primary task is to secure safety, of course. But if your operation faces prosecution for a breach of legislation, it might be your job to show a court whether or not certain steps or omissions were 'reasonably practicable'.

Consider each of the following situations. Note below whether a court would consider it 'reasonably practical' and give the reasons for your decision.

1. Improvement required: *provision of skip or other container at rear of premises for rubbish.*

Company objection: *cost of complaints (on grounds of aesthetic considerations) from neighbours.*

2. Improvement required: *ensure reasonable temperature in workplace.*

Company objection: *increased energy cost could lead to lay-offs.*

3. Improvement required: *replacement of floor surface.*

Company objection: *high cost relative to low risk.*

RIGHTS AND RESPONSIBILITIES

It must be said that in an exercise of this sort there can be no right and wrong answers since all the circumstances have not been described. However, it serves a useful indicator of how the courts weigh up the risk factors.

1. It is likely that the court would say that the risk to health outweighs the cost. Therefore something, if not a skip, should be provided whatever the cost. The aesthetic disturbance to neighbours would be considered irrelevant.
2. The financial situation of the employer is probably irrelevant.
3. The risk to staff might reasonably be met by replacing parts of the floor covering rather than replacing the whole.

Undertake the following case studies from Health and Safety in Hotels and Catering:

- *case study 1 on page 8*
- *case study 2 on page 16*
- *case study 3 on page 25.*

Check your answers with the comments in appendix 1 on page 72.

FOOD POISONING

As most people who reach a management or supervisory position in the hotel and catering industry are aware of the need for hygiene, this section will highlight the on-going requirement for high standards of hygiene and the laws involved.

The ultimate objective of all the rules and regulations concerning food and drink hygiene is to prevent people from becoming ill or being killed as a result of contaminated food or drink. Unfortunately, things do go wrong from time to time and the attendant publicity is never kind! Nor indeed should it be if the cause of the food poisoning is attributable to poor hygiene standards at the workplace. However, bad publicity is only one factor. Managers must also be keenly aware that, in such circumstances, they are likely to be prosecuted under both civil and criminal law.

Need to refresh your memory? Read some of the other publications available from the HCTB, in particular *Mastercraft 2: Health, Hygiene and Safety in the Hotel and Catering Industry*, *Germ Warfare Operations Manual* and the two *Foodcraft* books.

FOOD HYGIENE

The Food Act, 1984 — covering England and Wales — and the Food and Drugs (Scotland) Act, 1954 are the most important pieces of legislation affecting hygiene in catering. The main provisions:

- forbid the addition to or subtraction from any food so as to render it harmful to health
- forbid you from supplying any food which is inferior in nature, or substance or quality to what the purchaser paid for
- forbid the offering for sale, or sale, of food which is not fit for human consumption (it can be assumed that any food found in a catering unit is intended for sale and therefore this provision could be used to prosecute you if any unfit food is found on your premises)
- the power to close a catering premises for up to two years.

The Food Hygiene (General) Regulations, 1970 and the Food Hygiene (Scotland) Regulations, 1978 deal with:

- cleanliness of food handlers
- cleanliness of the premises and equipment
- hygienic practices
- food preparation and storage
- temperature control
- food contamination.

Read the section on hygiene in Health and Safety in Hotels and Catering (pages 41 to 44 inclusive). Then note your answers to case study 7 on page 66. Check your answers with appendix 1 on page 73. Then, if you do not already have one, obtain a copy from HMSO of the food hygiene regulations, addresses on page 78.

FIRE, EMERGENCIES AND OTHER DANGERS

You need to be familiar with a number of acts and regulations in order to formulate and implement safety procedures suitable for your workplace.

Read pages 29 to 41 inclusive of Health and Safety in Hotels and Catering, noting your own areas of responsibility. Use the checklists on page 45 to test your legal understanding and the existing standards in your workplace.

Keep up-to-date on new legislation by carefully noting reports in the catering trade press and magazines published by organisations such as the BHRCA, HCIMA and Brewers' Society.

It is impossible for one person to carry through everything efficiently. As a manager, you have a large responsibility for health and safety matters. But if ever there was a case for calling upon the support of your staff and outsiders, this is it!

Read chapter 3 of Health and Safety in Hotels and Catering. Use the checklists on pages 26 and 27 to help you test the effectiveness of health and safety communication and co-operation in your workplace. Note below the areas where you and other managers could work more closely with employees and/or outside experts. (These notes will be useful in a later exercise.)

Now complete case study 4 on page 39, checking your answers with appendix 1 on page 72.

PUTTING IT INTO PRACTICE

High standards do not come about simply because legislation exists. You need to set a good personal example and establish procedures and activities to ensure that satisfactory standards are reached and maintained:

- health and safety training (which is itself a legal requirement)
- analysis of company/unit accident records
- safety audits and/or hazard spotting exercises
- consultation through safety committees and with health and safety representatives and inspectors, environmental health officers, training consultants etc.

Read chapter 5 of Health and Safety in Hotels and Catering. When you reach page 60, undertake the hazard spotting exercises. Start with the pictures which most closely resemble your kind of operation, then tackle the others.

Check your answers with appendix 2 on page 74.

Take a long hard look at your organisation's induction programme. List below the health and safety points it contains at present. Make another list of the additional points which you now feel should be included.

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Hopefully, the induction programme covers most, if not all of the following:

- the organisation's health and safety policy statement
- particular safety rules
- safety precautions
- health precautions
- particular hygiene rules
- accident reporting procedures
- first-aid facilities
- the responsibilities of individuals
- the work of the safety committee (if any).

More particularly, it should cover:

- dangerous areas
- protective clothing
- safety in connection with equipment/machinery
- warning systems at work
- fire exercises
- evacuation drills
- specific health and safety legislation
- workplace rules on health, safety and hygiene.

Remember that employers have a legal obligation to provide suitable health and safety training.

You will recall that most organisations must draw up a statement about their health and safety policies. It is unlikely that you will have total or final responsibility for this. But it is a good idea to scrutinise it with a view to making any suitable recommendations to your bosses for its improvement.

Using the sample statement on pages 19 to 22 of Health and Safety in Hotels and Catering as a guide, check your company's health and safety statement, making notes below as appropriate.

RIGHTS AND RESPONSIBILITIES

Some of the points you might well have examined are:

- that such a statement actually exists (if your company has five or more employees)
- date of last revision
- whether the statement of intent is really practical (rather than theoretical)
- whether named individuals or appointments still exist
- whether working schedules have changed so as to render the arrangements no longer practicable
- whether new equipment has been installed that requires covering
- whether all staff, especially more recently employed ones, have had the document brought to their attention — did you ask new staff about it?
- is there a better way of ensuring all staff are aware of the company's policy and arrangements?

Read chapter 6 of Health and Safety in Hotels and Catering and look once more at the fire and safety checking forms in chapter 5.

Now work out a system of checks for your own unit. (Don't forget to allocate individual responsibilities and to establish timescales for the checks.)

Discuss your proposals with your boss and suggest calling in a local environmental health officer and/or a health and safety inspector to discuss the best ways to protect your personnel, your customers and your workplace.

RIGHTS AND RESPONSIBILITIES

This concludes the self-study unit *Rights and Responsibilities*. You have laid the foundations for sound personnel practices which will assist your operation to meet its targets, bring benefits to your staff and meet the demands of the law.

If you have attended the HCTB course *Rights and Responsibilities* you should complete the assignment *The Clean Broom Hotel*.

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